

U.S. Department of
Homeland Security

United States
Coast Guard



Office of Administrative Law Judges,
Seattle
United States Coast Guard

915 Second Avenue, Room 2609
Seattle, WA 98174
Staff Symbol: ALJ-Seattle
Phone: 206-220-7109
Fax: 206-220-7108
Email: Heather.L.MacClintock@uscg.mil

5720
September 17, 2019

SENT VIA E-MAIL TO: 62783-15115536@requests.muckrock.com

Sai
MuckRock
411A Highland Avenue
Somerville, MA 02144-2516

RE: DHS FOIA APPEAL 2019-HQAP-00319

Dear Sai:

This letter concerns your appeal of the Department of Homeland Security national Protection and Programs Directorate's (NPPD) response to your Freedom of Information Act (FOIA) request 2019-NPFO-00047. You sought email metadata for every email sent to or from any internet and intranet domain name owned or operated by or for NPPD. Upon review, NPPD determined your request was too broad in scope and asked you to provide a reasonable description of the records you sought within 30 days, and administratively closed your request when the requested clarification was not provided. You appealed, stating "[a]dministrative closure' is illegal, and 'too broad' is not a legal denial when the *search* requested is clear and feasible."

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing the FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge will be rendering the official appeal decision on behalf of the Department of Homeland Security.

FOIA requests must be "reasonably described." 5 U.S.C. § 552(a)(3)(A). This means agency staff can reasonably ascertain exactly which records are sought and locate them with a reasonable amount of effort. *See, e.g., Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982); *Marks v. DOJ*, 578 F.2d 261, 263 (9th Cir. 1978). However, "[a]n agency need not honor a request that requires an unreasonably burdensome search' or would require the agency 'to locate, review, redact, and arrange for inspection a vast quantity of material.'" *American Oversight v. EPA*, 386 F.Supp.3d 1, 15 (internal citations omitted). Your request does not specify a date range for the search, and I find an open-ended search for all emails sent to or from all NPPD domains is clearly so broad in scope as to be unduly burdensome.

You also claimed NPPD's decision to administratively close the request was illegal. However, "an agency's obligation under FOIA begins only upon receipt of a valid request." *Freedom Watch v. U.S. Dep't of State*, 925 F.Supp.2d 55, 60 (D.D.C. 2013) (internal quotation marks and citation omitted). Indeed, a recent Federal court decision found that a requester's refusal to narrow or clarify a request that did not reasonably describe documents constituted a failure to exhaust administrative remedies and granted summary judgment to the defendant agency. *See Cable News Network, Inc. v. FBI*, 271 F.Supp.3d 108 (D.C. Cir. 2017).

Your appeal is now closed. This decision is the final action of the Department of Homeland Security concerning your initial FOIA request 2019-NPFO-00047 and DHS FOIA Appeal 2019-HQAP-00319. While a comprehensive review of your appeal was made, you may seek judicial review of this decision pursuant to 5 U.S.C. §552(a)(4)(B) in United States District Court for either: 1) the district where you reside; 2) the district where the agency records are situated; or 3) the District of Columbia.

Notwithstanding the above decision, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,



Heather L. MacClintock

Attorney Advisor

United States Coast Guard

Copy : Bradley White, DHS FOIA Appeals and Litigation

Sent: Via E-mail to the above address